

SENATE—Sunday, March 20, 2005

The Senate met at 2 p.m. and was called to order by the Honorable MEL MARTINEZ, a Senator from the State of Florida.

The PRESIDING OFFICER. Today's prayer will be led by the guest Chaplain, the Reverend John Boyles, National Capital Presbytery, and former pastor of Capitol Hill Presbyterian Church.

PRAYER

The guest Chaplain offered the following prayer:

O God of all that is, or is to be: take, we pray, Your power and reign, in majesty and wisdom, here in this Chamber, on this day which You have made, reigning in this body assembled here, that all here today would follow in their own faith a path of righteousness and justice, finding in conscience a concord and peace which passes our human understanding but rests in Your glory, laud and honor, O great Creator and Lord of all generations; may Your work and will be done on Earth today, we pray Amen.

PLEDGE OF ALLEGIANCE

The Honorable MEL MARTINEZ led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 20, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MEL MARTINEZ, a Senator from the State of Florida, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. MARTINEZ thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

TERRI SCHIAVO

Mr. FRIST. Mr. President, the Congress is continuing to work to pass legislation to give Terri Schiavo another chance at life. Let me update all of our colleagues on where we are right now.

On Saturday, yesterday, we reached a bipartisan, bicameral agreement on a legislative solution. At that point, we initiated a procedural process to act on the bill, a process which brought both the House of Representatives and the Senate back today to complete action on this critically important matter.

Shortly, we will stand in recess subject to the call of the Chair. This action will allow the Senate to come back into session at a moment's notice to consider the legislation. The Senate will remain here throughout the afternoon and, if necessary, late into the evening in order to act immediately on this bill once it is ready.

Because Terri Schiavo is being denied lifesaving nutrition this very moment, time is of the essence.

Let me summarize again for everyone what the agreed-upon legislation does. Under this bill, Terri Schiavo will have another chance. She will have another opportunity to live. The bill allows Terri's case to be heard in Federal court. More specifically, it allows a Federal district judge to consider a claim on behalf of Terri Schiavo for alleged violations of constitutional rights or Federal laws relating to the withholding of food, water, or medical treatment necessary to sustain her life.

I am heartened by the way Congress is uniting in a bipartisan, bicameral way in this unique situation. Now is the time for us to act. Terri deserves it. I remain committed as leader to pass legislation to give Terri Schiavo one more chance at life.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now stand in recess subject to the call of the Chair.

There being no objection, the Senate, at 2:05 p.m., recessed subject to the call of the Chair and reassembled at 4:30 p.m. when called to order by the Acting President pro tempore.

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

THERESA MARIE SCHIAVO

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate

proceed to the immediate consideration of S. 686 introduced earlier today.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 686) for the relief of the parents of Theresa Marie Schiavo.

There being no objection, the Senate proceeded to consider the bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JUDICIAL DISCRETION UNDER THE SCHIAVO RELIEF BILL

Mr. LEVIN. Mr. President, I rise to seek clarification from the majority leader about one aspect of this bill, the issue of whether Congress has mandated that a Federal court issue a stay pending determination of the case.

Mr. FRIST. I would be pleased to help clarify this issue.

Mr. LEVIN. Section 5 of the original version of the Martinez bill conferred jurisdiction on a Federal court to hear a case like this, and then stated that the Federal court "shall" issue a stay of State court proceedings pending determination of the Federal case. I was opposed to that provision because I believe Congress should not mandate that a Federal judge issue a stay. Under longstanding law and practice, the decision to issue a stay is a matter of discretion for the Federal judge based on the facts of the case. The majority leader and the other bill sponsors accepted my suggestion that the word "shall" in section 5 be changed to "may."

The version of the bill we are now considering strikes section 5 altogether. Although nothing in the text of the new bill mandates a stay, the omission of this section, which in the earlier Senate-passed bill made a stay permissive, might be read to mean that Congress intends to mandate a stay. I believe that reading is incorrect. The absence of any state provision in the new bill simply means that Congress relies on current law. Under current law, a judge may decide whether or not a stay is appropriate.

Does the majority leader share my understanding of the bill?

Mr. FRIST. I share the understanding of the Senator from Michigan, as does the junior Senator from Florida who is the chief sponsor of this bill. Nothing in the current bill or its legislative history mandates a stay. I would assume, however, the Federal court would grant a stay based on the facts of this case because Mrs. Schiavo would need to be alive in order for the court to make its determination. Nevertheless, this bill does not change current law under which a stay is discretionary.

Mr. LEVIN. In light of that assurance, I do not object to the unanimous consent agreement under which the bill will be considered by the Senate. I do not make the same assumption as the majority leader makes about what a Federal court will do. Because the discretion of the Federal court is left unrestricted in this bill, I will not exercise my right to block its consideration.